

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARIANNE PIZZITOLA,

Plaintiff,

-against-

CITY OF NEW YORK, CITY OF NEW YORK FIRE
DEPARTMENT, NICHOLAS SCOPPETTA, JERRY
GOMBO, ROBERT MCCRACKEN, FRANK
CRUTHERS, JAMES BASILE

Defendants
.

**STIPULATION AND
ORDER OF
SETTLEMENT AND
DISCONTINUANCE**

04 Civ. 4801 (ILG)

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WHEREAS, plaintiff commenced this action by filing a complaint on November 5, 2004, alleging that her rights under 42 U.S.C. §2000e, et. seq. (“Title VII”) and the Americans With Disabilities Act (“ADA”) had been violated; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff’s allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. Plaintiff hereby agrees to withdraw, with prejudice, and without costs, expenses, or fees in excess of the amounts specified in paragraph “2” below, all the claims asserted against defendants City of New York, New York City Fire Department, Nicholas Scoppetta, Robert McCracken, Jerry Gombo, Frank Cruthers and James Basile,

their successors or assigns, and all present and former officials, employees, representatives and agents of the City of New York and the New York City Fire Department (“NYFD”) (“Released Parties”) from any and all claims, liabilities and/or causes of action which Plaintiff has or may have against any of the Released Parties based on any act, omission, event or occurrence occurring from the beginning of the world up through and including the date hereof, including, without limitation, any and all claims which were or could have been alleged by Plaintiff in this action arising out of the events alleged in the complaint herein, including all claims for attorneys’ fees and costs.

2. In consideration for the above, the City of New York hereby agrees to pay plaintiff the gross sum of one-hundred-fifty-thousand dollars and no cents (\$150,000.00), plus forty-thousand dollars(\$40,000) for attorneys’ fees and costs. The City of New York shall issue one check made payable to “Marianne Pizzitola and Belesi & Conroy, P.C.” in the amount of one-hundred-ninety thousand dollars (\$190,000.00).

3. Plaintiff shall execute and deliver to defendants’ attorney all documents necessary to effect this settlement, including, without limitation, a release based on the terms of paragraph 1(one), above, and an affidavit regarding Liens.

4. Nothing contained herein shall be deemed to be an admission by any of the defendants that they have in any manner or way violated plaintiff’s rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to,

any other litigation or settlement negotiations, except for any other litigation that might arise between these same parties.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or the New York City Fire Department.

6. In the event that a taxing authority or a court determines the payment made pursuant to this Stipulation and Order of Settlement and Discontinuance by the City of New York City is subject to personal income tax, any taxes, interest or penalties determined to be owed shall be the sole and complete responsibility of plaintiff, and plaintiff and her counsel shall not have a claim, right, or cause of action against the City of New York, the NYFD, Nicholas Scoppetta, Robert McCracken, Jerry Gombo, Frank Cruthers or James Basile, or any former, present, or future officials, agents, employees, or representatives of the City of New York, the NYFD, Nicholas Scoppetta, Robert McCracken, Jerry Gombo, Frank Cruthers or James Basile, or their successors and assigns, on account of such taxes. The City of New York, the NYFD, Nicholas Scoppetta, Robert McCracken, Jerry Gombo, Frank Cruthers, and James Basile and their former, present, or future officials, agents, employees, or representatives or their successors and assigns, do not waive any claims they might have should any taxing authority proceed against them on account of any moneys paid under this Stipulation and Order of Settlement and Discontinuance.

This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
April 24, 2007

BELESI & CONROY, P.C.
1225 Franklin Avenue, Ste. 400
Garden City, N.Y. 11530
Attorney for Plaintiff

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-112
New York, N.Y. 10007
(212) 788-8682

By: 

Matthew Conroy, Esq.

By: 

Phyllis Calistro
Senior Counsel
(PC5527)

SO ORDERED:

U.S.D.J.